

In the Matter of Merchant Mariner's Document No. Z-393237
Issued to: OLAF V. MAGHINANG

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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OLAF V. MAGHINANG

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 4 April, 1952, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, revoked Merchant Mariner's Document No. Z-393237 issued to Olaf V. Maghinang upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as wiper on board the American SS WAGON BOX under authority of the document above described, on or about 5 February, 1952, while said vessel was at Marcus Hook, Pennsylvania, he wrongfully had in his possession certain narcotics; to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own selection during the taking of testimony. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of two U. S. Customs Port Patrol Officers who were present when the marijuana in question was found. It was stipulated that Appellant had been a member of the crew on the WAGON BOX at the time alleged and that the substance was marijuana.

Appellant testified under oath in his own behalf. Appellant stated that he could not, in any manner, account for the marijuana which was found in one of his bedroom slippers.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order revoking Appellant's Merchant Mariner's Document No. Z-393237 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the evidence does not prove the marijuana was in Appellant's possession since he had been ashore for twenty hours and other

persons had free access to his quarters; that the seizure occurred while Appellant was ashore and he admitted ownership of the slipper but denied having any knowledge of the marijuana when confronted by the Customs agents; that Appellant was tried for the same offense before the Delaware County Court at Media, Pennsylvania, on 17 March, 1952, and acquitted by the jury on the basis of the same testimony given by the same witnesses as were produced at the hearing; that Appellant is not a user of marijuana and he has no knowledge as to how the marijuana happened to be in his slipper; and that Appellant has no record of prior disciplinary action during his six years at sea on American Merchant Marine vessels.

APPEARANCES: Coleman J. Curran, Port Patrolman of the NMU, of counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 6 February, 1952, Appellant was serving as wiper on board the American SS WAGON BOX and acting under authority of his Merchant Mariner's Document No. Z-393237 while U. S. Customs authorities were conducting a routine search of the ship at Marcus Hook, Pennsylvania.

Port Patrol Officers Charles J. Kaselis and Lawrence C. McCartney were accompanied by the ship's Chief Mate when they walked through the open doorway into the forecastle occupied by Appellant and two other members of the crew. One of the latter two men, who was a new crew member and had just come aboard, entered the room shortly afterwards.

During the course of the search, Officer Kaselis picked up Appellant's bedroom slippers which were on the deck and had been shoved about a foot under the head of Appellant's lower bunk. The slippers were not in the same place where Appellant had left them the day before when he had last used them. Officer Kaselis pulled a stocking out which had been stuffed into one of the slippers and in the toe of the slipper he found a package which subsequent analysis showed to contain 140 grains of marijuana. The crew member in the room said he knew nothing about the marijuana and did not know who owned the slippers.

The package was left in the slipper until Appellant returned to the ship after having been ashore on leave for approximately twenty hours. When Appellant was questioned upon entering his forecastle about ten minutes after the marijuana had been found, he identified the slippers as his but he said that he did not know anything about the package found in the toe of one of the slippers.

The third occupant entered the forecastle before the search was completed and he also denied having any knowledge concerning the package of marijuana. A thorough search of the room and Appellant's person failed to disclose any further evidence of marijuana although some other marijuana had been located on a beam over a doorway in the passageway about ten feet from Appellant's forecastle. Some marijuana was also found in the after steering room.

OPINION

I have carefully considered the testimony presented to the Examiner in this case, and am not satisfied that it supports the charge and specification. Having reached that conclusion, it is not necessary to discuss the other propositions advanced on this appeal.

ORDER

The Order of the Coast Guard Examiner dated at Philadelphia, Pennsylvania, on 4 April, 1952, is VACATED, SET ASIDE and REVERSED. The charge against Appellant in this case is dismissed.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 2nd day of July, 1952.